

## §216.27

Chief Counsel, Federal Railroad Administration, Washington, DC 20590. Upon receipt of a petition, FRA will immediately contact the petitioner and make the necessary arrangements for a conference to be held at the earliest date acceptable to the petitioner. At this conference, the petitioner will be afforded an opportunity to submit facts, arguments and proposals for modification or withdrawal of the Emergency order. If the controversy is not resolved at this conference and a hearing is desired, the petitioner must submit a written request for a hearing within fifteen (15) days after the conference. The hearing will commence within fourteen (14) calendar days of receipt of the request and will be conducted in accordance with sections 556 and 575, title 5, U.S.C.

(c) Unless stayed or modified by the Administrator, the requirements of each Emergency order issued under this subpart shall remain in effect and be observed pending decision on a petition for review.

### §216.27 Reservation of authority and discretion.

The FRA may issue Emergency orders concerning track without regard to the procedures prescribed in this subpart whenever the Administrator determines that immediate action is required to assure the public safety.

## PART 217—RAILROAD OPERATING RULES

### Subpart A—General

Sec.

217.1 Purpose.

217.2 Preemptive effect.

217.3 Application.

217.4 Definitions.

217.5 Penalty.

217.7 Operating rules; filing and recordkeeping.

217.9 Program of operational tests and inspections; recordkeeping.

217.11 Program of instruction on operating rules; recordkeeping; electronic recordkeeping.

217.13 Information collection.

APPENDIX A TO PART 217—SCHEDULE OF CIVIL PENALTIES

AUTHORITY: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

## 49 CFR Ch. II (10–1–14 Edition)

SOURCE: 39 FR 41176, Nov. 25, 1974, unless otherwise noted.

### Subpart A—General

#### §217.1 Purpose.

Through the requirements of this part, the Federal Railroad Administration learns the condition of operating rules and practices with respect to trains and other rolling equipment in the railroad industry, and each railroad is required to instruct its employees in operating practices.

#### §217.2 Preemptive effect.

Normal State negligence standards apply where there is no Federal action covering the subject matter. Under 49 U.S.C. 20106 (section 20106), issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local railroad safety or railroad security hazard; that is not incompatible with a law, regulation, or order of the United States Government; and that does not unreasonably burden interstate commerce. Section 20106 permits State tort actions arising from events or activities occurring on or after January 18, 2002, for the following: violation of the Federal standard of care established by regulation or order issued by the Secretary of Transportation (with respect to railroad safety, such as these regulations) or the Secretary of Homeland Security (with respect to railroad security); a party's violation of, or failure to comply with, its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the two Secretaries; and a party's violation of a State standard that is necessary to eliminate or reduce an essentially local safety or security hazard, is not incompatible with a law, regulation, or order of the United States Government, and does not unreasonably burden interstate commerce. Nothing in section 20106 creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action.

[73 FR 8495, Feb. 13, 2008]